

Serial No. 10/021,901

Docket No.: KCC-15,611

REMARKS

Applicants' undersigned attorney thanks the Examiner for his comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the above Amendment and the following remarks. Currently, Claims 1, 2, 4-22, and 49-60 are pending, with Claims 49-60 withdrawn from consideration.

Amendments to the Claims

Claims 1, 2, and 4-22 have been examined with no claims being allowed. Applicants have amended Claims 1, 2, and 4-22. No new matter has been added by this Amendment.

Claim 1 has been amended by removing the "liner" limitation from the preamble and placing a "swimwear liner" limitation in the body of the claim. Support for the "swimwear liner" limitation is provided throughout the specification, such as at page 3, lines 17-18, as well as in the title of the application. The preambles of Claims 2 and 4-22 have been amended to be consistent with the amendments to Claim 1.

The Examiner opines that Applicants' previous amendments to the claims (i.e., the addition of the "liner" limitation to the preamble) and the addition of Claims 49-60 constituted "an invention that is independent or distinct from the invention originally claimed." The restriction requirement conveyed by telephone on 18 July 2003 and set forth in the Office Action mailed 04 August 2003 divided the original claims into two groups, namely (I) **claims drawn to a disposable garment free of absorbent material**, and (II) **claims drawn to an absorbent garment**. Applicants elected the first group, namely claims drawn to a disposable garment free of absorbent material. The amendments to Claims 1, 2, and 4-22, and new Claims 49-60 are consistent with Applicants' election. More particularly, **each of the pending claims (Claims 1, 2, 4-22, and 49-60) is drawn to a disposable garment free of absorbent material**. Furthermore, each of the pending claims has been *narrowed* by limiting the *type* of garment to a liner. Because the amendments to Claims 1, 2, and 4-22, and new Claims 49-60 are consistent with Applicants' election, Applicants

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hereby traverse the Examiner's constructive election of the original presentation of the claims over the amended claims and the addition of Claims 49-60.

The title of the present application is "Permeable, Close to the Body Liner for Swimwear," and the specification of the present application unambiguously describes several embodiments of the liner, wherein the liner may be either a stand-alone garment or a layer incorporated within a disposable swimpant. It is obvious from the specification, as well as the claims, that the stand-alone garment *is* a liner. In the previous Amendment filed 29 October 2003, Applicants' addition of the "liner" limitation into the claims was consistent with the scope of the invention and was consistent with the election of claims.

No additional fee is due for this Amendment because the number of independent claims remains unchanged and the total number of claims also remains unchanged.

Claim Rejections - 35 U.S.C. §102

The rejection of Claims 1-11 and 17-22 under 35 U.S.C. §102(a) as being anticipated by Christoffel et al. (U.S. Patent No. 6,582,412, hereinafter "Christoffel") is respectfully traversed.

Christoffel discloses a disposable swimsuit that provides coverage of a wearer's upper torso. For a reference to anticipate a claim, the reference must disclose each and every element or limitation of the claim. Christoffel does not disclose each and every element or limitation of amended Claim 1.

Applicants' invention as recited in Claim 1 is directed to a stand-alone disposable garment that is a *swimwear liner*. The swimwear liner is substantially free of an absorbent assembly and substantially free of liquid-impermeable material. In contrast, Christoffel discloses a swimsuit that either includes an absorbent assembly, or a stand-alone swimsuit garment that may be worn *over* an absorbent garment (Col. 8, lines 43-48). Christoffel fails to disclose a stand-alone disposable swimwear liner that is substantially free of an absorbent assembly.

The Examiner points out that swimsuits are often worn underneath other clothing, and suggests that a swimsuit can also function as a garment liner.

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However, a "swimwear liner" is specifically worn underneath swimwear. Thus, swimwear per se is worn *over* a swimwear liner.

For at least the reasons presented above, Applicants respectfully submit that Claim 1 is not anticipated by Christoffel. Because Claims 2, 4-11, and 17-22 depend from Claim 1, these claims are also not anticipated by Christoffel. Thus, Applicants respectfully request withdrawal of this rejection.

Claim Rejections - 35 U.S.C. §103

The rejection of Claims 12-16 under 35 U.S.C. §103(a) as being unpatentable over Christoffel is respectfully traversed, particularly in view of the above Amendment and the following remarks.

Contrary to the Examiner's assertion, the claimed pore sizes are not arbitrary or obvious. As explained at page 20, lines 10-17, of the present application, mesh material having the specific range of hole sizes articulated in Claim 12 has been found to be permeable to liquid and fine particulates, such as sand, but substantially impermeable to bowel movement materials. Thus, the claimed pore sizes are of a critical nature. Christoffel fails to disclose or suggest any type of material or garment that is permeable to liquid and fine particulates but is substantially impermeable to bowel movement materials. Because Christoffel fails to disclose or suggest any type of material or garment having such properties, there is no suggestion for a person having ordinary skill in the art to contemplate pore sizes that would provide such properties.

Furthermore, as explained above, Christoffel fails to disclose or suggest a stand-alone disposable swimwear liner, particularly a swimwear liner that is substantially free of an absorbent assembly. To the contrary, Christoffel discloses a stand-alone swimsuit garment that may be worn *over* an absorbent garment, thereby teaching away from the concept of a swimwear liner.

For at least the reasons given above, Applicants respectfully submit that the teachings of Christoffel fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

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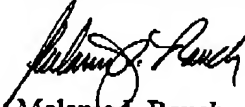
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Conclusion

Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, Applicants' undersigned attorney requests a telephone interview with the Examiner.

Applicants sincerely believe that this Patent Application is now in condition for allowance and, thus, respectfully request early allowance.

Respectfully submitted,



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